



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF P-J-

DATE: JULY 13, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a biostatistics researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional evidence and contends that he is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will sustain the appeal.

## **I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.<sup>1</sup> *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether,

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>2</sup>

## II. ANALYSIS

Although not addressed in the Director's decision, the record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.<sup>3</sup> The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was working as an associate professor of biostatistics at [REDACTED] in Iran. He asserts that his work there has involved "the design and analysis of clinical trials" and has resulted in publication of "a number of widely-cited clinical trial studies" in medical and scientific journals. For the reasons discussed below, we find the Petitioner has established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

### A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicates that he seeks to contribute to the U.S. healthcare system by designing and analyzing clinical trials and quality of life (QoL) studies. He further explains that he intends to "apply statistical methodologies for drug development, be responsible for writing statistical sections of protocols, and interpret statistical results for clinical study reports." In addition, the Petitioner states: "I would like to continue doing research in the field of cross-cultural quality of life, especially to use advanced statistical methods such as 'items response theory' models to develop and design specific quality of life instruments for cross-cultural comparisons."<sup>4</sup> He also provides evidence of multiple U.S. job offers in his research area.<sup>5</sup>

Furthermore, the record includes letters of support indicating that the Petitioner's ongoing biostatistics work contributes to advancing statistical approaches in medical research. For example, [REDACTED] a professor at [REDACTED], asserts that the Petitioner's "work represents an important contribution to the design and analysis of data obtained from clinical

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<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>3</sup> The Petitioner presented an academic credentials evaluation indicating that his Ph.D. completion certificate from [REDACTED] is the foreign equivalent of a Ph.D. in biostatistics from a regionally accredited institution of higher education in the United States. See 8 C.F.R. § 204.5(k)(3)(i)(A).

<sup>4</sup> QoL is a patient-reported outcome measure that helps medical professionals monitor a population's health.

<sup>5</sup> As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we consider information about his prospective positions to illustrate the capacity in which he intends to work.

trials.” Lastly, the Petitioner offers documentation from the U.S. Food and Drug Administration, National Institutes of Health, Centers for Disease Control and Prevention, and American Diabetes Association reflecting the benefits of clinical trials and biostatistics research. Accordingly, we find that the Petitioner’s proposed research aimed at designing and analyzing clinical trials and QoL studies has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of his work. His evidence includes a letter of support from [REDACTED] a medical statistics researcher at [REDACTED] discussing how the Petitioner’s proposed work stands to advance the biostatistics field. [REDACTED] asserts that the Petitioner’s statistical methods research “can lower the costs of clinical trials while maintaining high levels of statistical accuracy.” The record also contains documentation indicating that the benefit of his biostatistics research has broader implications, as the results are disseminated to others in the field through medical journals. As the Petitioner has documented both the substantial merit and national importance of his proposed research, we find that he meets the first prong of the *Dhanasar* framework.

#### B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner’s qualifications. The Petitioner submitted his curriculum vitae, academic records, published articles, and documentation of numerous articles that cited to his research findings. In addition, the Petitioner offered reference letters describing his expertise in biostatistics and his past record of success as a researcher.

We find that the Petitioner’s past experience renders him well positioned to advance his proposed endeavor. Several references discuss how the Petitioner’s research relating to statistical methods has impacted the field. For instance, [REDACTED] a professor of biostatistics at [REDACTED], explains that the Petitioner “uncovered serious and widespread flaws in how geneticists had been reporting their data in published work, including poorly described methodology and failure to estimate the statistical power and sample size, disclose how missing values were estimated and more.” With respect to the Petitioner’s research relating to filter-based and embedded statistical methodologies, [REDACTED] states: “By providing detailed requirements for the best practice of these methods, [the Petitioner’s] work has thus helped advance the field significantly.” Furthermore, [REDACTED] president of the [REDACTED] notes that the Petitioner’s analysis of the [REDACTED] survey revealed that a modified approach scoring the survey “is necessary in order to maintain the accuracy and unidimensionality of this survey.” [REDACTED] further contends that the Petitioner “is an influential contributor to biostatistics and has provided valuable assistance to the advancement of this field.”

In addition, [REDACTED], a research investigator in the Department of Psychiatry at the [REDACTED], indicates that the Petitioner “has published several articles evaluating the effectiveness and reliability of questionnaires designed to obtain information of QoL in children.” [REDACTED] asserts that the Petitioner’s record of publication and citation reflects a “solid impact on his field” and shows that

his work has “been a great aid to medical research and practice.” As corroborating documentation regarding the significance of his work, the Petitioner provides citation evidence showing that his published work has been frequently cited by independent researchers,<sup>6</sup> and that the rate at which his work has been cited is high relative to others in his field. This documentation helps demonstrate that the Petitioner is well positioned to advance his proposed research in the United States.

The Petitioner’s experience and expertise in his field, published work, citation evidence, record of success contributing to various research projects, and progress in the area of advancing and improving statistical methods position him well to advance his proposed endeavor. Accordingly, we find that he satisfies the second prong of the *Dhanasar* framework.

### C. Balancing Factors to Determine Waiver’s Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. As a biostatistics researcher, the Petitioner possesses considerable experience and expertise in the design and analysis of clinical trials, and in the development and validation of QoL studies in the medical field. The record also demonstrates the widespread benefits associated with research aimed at designing and analyzing clinical trials and QoL studies. In addition, the Petitioner has documented his past successes in advancing statistical approaches in medicine and providing influential research findings. Based on the Petitioner’s track record of successful research and the significance of his proposed work to advance U.S. healthcare interests, we find that he offers contributions of such value that, on balance, they would benefit the United States even assuming that other qualified U.S. workers are available.

## III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We find that he has established he is eligible for and otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is sustained.

Cite as *Matter of P-J-*, ID# 1412985 (AAO July 13, 2018)

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<sup>6</sup> For example, the Petitioner’s appellate submission includes a citation index from [REDACTED] indicating that his body of work (approximately 100 published articles) has been cited to 1,192 times.